

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF OPERATING)		
ENGINEERS, LOCAL NO. 2, AFL-CIO,))	
)	
Petitioner,))	
)	
vs.))	Public Case No. 83-015
)	
CITY OF DESOTO,))	
)	
Respondent.))	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation pursuant to the filing with the Board by the International Union of Operating Engineers, Local No. 2, AFL-CIO (hereinafter Petitioner), of a petition for certification as public employees representative for certain employees of the City of DeSoto (hereinafter Respondent). On September 7, 1983, a hearing was held at the City Hall in DeSoto, Missouri, at which representatives of the Petitioner and Respondent were present. The case was heard by the State Board of Mediation Chairman Mary Gant, Employer Member Norman Litz, and Employee Member James O'Mara. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determination by Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence and argument in support of their respective positions. The Board, after careful review of the evidence, sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The City of DeSoto has approximately 6,000 inhabitants. The City government is divided into several Departments; Administration and Finance, Police, Water and Sewer, Streets, and Municipal Court. The city has twenty (20) full-time employees, excluding the Police Department, and one part-time employee.

All employees of the City are salaried. They share the same fringe benefits, sick leave, vacation time, hospitalization, pension plan and holidays.

Administration and Finance Department

This Department is comprised of the City Manager, Finance Officer, City Clerk, Accounting Clerk, Billing Clerk, and a part-time Civil Defense Director. The accounting and billing clerks are responsible to the Finance Officer and the Finance Officer is answerable to the City Manager. The Accounting Clerk prepares the payroll and maintains the payroll records regarding sick leave and vacation. She also prepares billings and maintains tax records, keeps accounts receivable and payable records, and prepares checks. The Accounting Clerk and Billing Clerk have communication with the Sewer and Water Department employees in regard to turning on or off of water service. Contact is also made with Sewer and Water Department meter readers for the same purpose.

The Billing Clerk prepares the water utility bills from the meter books and receives the payment of the bill. The Accounting and Billing Clerks are employed at City Hall and the Water and Sewer Department employees are located at East Main Street. These clerks also type and perform other routine clerical duties associated with the Water, Sewer, and Street Department.

The City Clerk is an appointed position. She is directly responsible to the City Manager. She performs secretarial services for the City Manager and the other city departments. She also keeps and maintains the records of the City Council Meetings,

public as well as executive sessions. The City Clerk has direct access to all personnel policies of the City. She is not paid overtime.

Water, Sewer and Street Departments

There are seven employees in the Water and Sewer Department; a superintendent, a supervisor, a meter reader, heavy equipment operator, two maintenance workers and a waste water treatment operator. There are also seven employees in the Street Department; a superintendent, a supervisor, a mechanic and four maintenance workers. The work crews of both departments, which consist of all or part of the employees of the departments, depending on the work to be performed, are responsible to the supervisor, who is responsible to the superintendent of the Department. The supervisors work with and direct the superintendent of the Department. The supervisors work with and direct the crews on specific jobs. The supervisors as assigned by the superintendent may on occasion act as superintendent on a temporary basis during the superintendent's absence during vacation time or sick leave. There is no dispute as to the supervisory status of the "superintendent".

Animal Control and Park Department

At the Hearing the parties agreed to exclude the Animal Control Officer from the proposed bargaining unit due to his status as a police officer. The parties also agreed to exclude the employees of the Park Department from the unit, as the park employees are employed by the Park Board, which is a separate political sub-division apart from the City of DeSoto.

CONCLUSIONS OF LAW

The International Union of Operating Engineers, Local No. 2, AFL-CIO has petitioned to be certified as the public employee representative for a unit of all full-time and part-time Street Department, Park Department, Animal Control, and Water & Sewer Department employees of the City of DeSoto, Missouri, including equipment operators,

truck drivers, laborers, mechanics and general maintenance employees, meter repairmen, sewer treatment operators, clerks, billing clerks, janitors and all working foremen; excluding professional and other clerical personnel. The parties have stipulated that the animal control officer is a police officer and should be excluded from the unit. The parties through their post hearing briefs also agree that Park Department employees are not within the same political sub-division and should not be included in the bargaining unit sought, and that the city clerk is a managerial employee and likewise should be excluded as she does not share a community of interest with the other employees petitioned for.

The petition filed by the Union described the bargaining unit sought. It included the job classifications of "clerk and billing clerk" and "working foreman" - excluding professional and other clerical personnel.

The petition was not amended prior to the hearing. At the hearing, however, the Union took the position that the accounting and billing clerks should not be placed in the unit. Also, the Petitioner gave no testimony relative to the positions described as "working foremen". The Board concludes that the Union originally viewed the supervisor positions in the Water and Sewer and Street Departments as working foremen, but now consider them to be managerial employees.

The two issues to be resolved by the Board are the status of those employees in the job classification of "supervisor" and whether the petitioned for service workers and clerical together constitute an appropriate bargaining unit.

An appropriate unit is defined by Section 105.500(1), RSMo 1978:

"a unit of employees at any plant or installation or in a craft or function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

The Board has adopted a number of factors in determining the supervisory status of employees as set forth in the case of Western Missouri Public Employees,

Local 1812, and Missouri State Council 72, American Federation of State, County and Municipal Employees vs. Jackson County, Missouri (Department of Corrections); Public Case No. 90. They are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

The factors applicable in this case are:

The Authority to Recommend Hiring, Promotion, Transfer, Discipline or Discharge

These employees designate as superintendents possess the power to hire, fire, promote, transfer, discipline and/or discharge employees. The supervisors, who are subordinate to the superintendent, do not possess this authority. Although testimony was given that in the absence of the superintendent, the supervisors may exercise some authority, it is for a limited period of time (three or four weeks out of a year, during vacation or sick leave) and not on a regular basis.

The Authority to Direct and Assign the Work Force

Work assignments are routine in nature and involve simple instructions given by the superintendent to the employees in his department who are already familiar with the

various tasks associated with the job. Specific jobs are assigned to specific employees by the superintendent.

The Number of Employees Supervised, and the Number of Other Persons Exercising Greater, Similar or Lesser Authority Over the Same Employees

The Street, Water, and Sewer Department employs seven (7) employees in each of the respective departments; one of which is a superintendent and one a supervisor. Two supervisors to supervise five (5) employees is excessive supervision under any standard.

Level of Pay Including Whether the Supervisor is Paid for His Skill or for His Supervision of Employees

Those employees designated as "supervisors" are paid substantially less than those employees designated as "superintendents". The supervisor is paid on the basis of his skill as a workman and not because of his supervisory authority.

Whether the Supervisor is a Working Supervisor or Whether He Spends a Substantial Majority of His Time Supervising Employees

None of the employees in the Street, Water, and Sewer Departments are exempt from physically working on a designated job. Both the "superintendent" and the "supervisor" work with their hands to get a job done. The superintendents and supervisors also perform work on Department work crews. No testimony was given as to how much time was actually spent in directing the work force.

Based on the testimony presented by both parties, the State Board of Mediation concludes that the employees designated as "supervisors" are in fact working foremen and are included in the bargaining unit.

Should the Clericals be Included in the Bargaining Unit With the Service and Maintenance Department Employees?

Factors the Board examines in determining whether a group of employees shares a community of interest as required by Section 105.500(1), RSMo 1978, include, inter alii"

1. Contract between employees;
2. Similarities in pay, terms of employment;
3. Type of work performed; and
4. Relationship to the administrative organization of the employer.

The clerks at issue here like all other city employees are salaried and have the same pension plan, hospitalization insurance, vacation, sick leave, and holiday pay. Both the billing and accounting clerk have contact with the meter reader from the Water and Sewer Department.

Although the statute does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", the Board has consistently looked to a number of factors in addition to the previously mentioned in determining whether employees have such a community of interest. Service Employees International Union, Local 96, AFL-CIO vs. City of Blue Springs, Public Case No. 79-031 (SBM 1980); Service Employees International Union Local 50 vs. City of Springfield, Public Case No. 79-013 (SBM 1979). The deciding factor in this case is the danger of overfragmentation.

It has been the position of this Board that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their rights to effective bargaining. Service Employees International Union, Local 50 vs. City of Springfield, Supra. In the instant case, excluding the three clerks from the unit of service employees would weaken their

position at the bargaining table and deny their right to effective bargaining. In order to insure their rights to effective bargaining, the Board joins them into one bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

"All full-time and part-time employees of the City of DeSoto in the Street, Water, Sewer Departments including supervisors and clerical; excluding police, fire department, city clerk, and managerial employees."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately proceeding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Petitioner, International Union of Operating Engineers, AFL-CIO, Local No. 2.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 21st day of November, 1983.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ Norman Litz

Norman Litz, Employer Member

/s/ James O'Mara

James O'Mara, Employee Member